

Original

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

FILED**AUG 19 2008**U.S. DISTRICT COURT
ELKINS WV 26241

Albert Thrower #39254-060

~~PO Box 1000 c/o Morgantown FCI~~
~~Morgantown, WV 26507-1000~~

(Full name under which you were convicted,
prison number, place of confinement, and
full mailing address)

Petitioner,

vs.

Warden, Wayne Phillips
PO Bx 1000
Morgantown, WV 26507

(Name of Warden or other authorized person
having custody of petitioner)

United States of America

**Application for Habeas Corpus
Pursuant to 28 U.S.C. § 2241**

Civil Action No. 1:08cv169
(to be assigned by Clerk)

Attorney General **Respondent.** Michael Mukasey
950 Pennsylvania Av., Wash DC 20530

Important notes to read before completing this form:

- ★ Please read the entire petition before filling it out. Answer only those questions which pertain to your claim(s).

1. This petition concerns (check the appropriate box):

- ☐ a conviction
☒ a sentence
☐ jail or prison conditions
☐ prison disciplinary proceedings
☐ a parole problem
☐ other, state briefly: _____

2. Are you represented by counsel?

☐ Yes☒ No

No

If you answered yes, list your counsel's name and address:

NA

3. List the name and location of the court which imposed your sentence:
Northern District of Ohio, Akron, Ohio

4. List the indictment or case number, if known:

5. List the nature of the offense for which the sentence was imposed: Bankruptcy Fraud, Mail Fraud, Wire Fraud, Conspiracy to commit same, possession stolen social security card

6. List the date which sentence was imposed and the terms of the sentence:
90 months, imposed 2/13/04

7. What was your plea to each count? (Check one)

☐ Guilty
☒ Not Guilty
☐ Nolo Contendere

8. If you were found guilty after a plea of not guilty, how was that finding made?

☒ A jury
☐ A Judge without a jury
☐ A Magistrate Judge without a jury

9. Did you appeal from the judgment of conviction or imposition of the sentence?

☒ Yes ☐ No 28 USC 2255 only

10. If you did appeal, give the following information for each appeal:

A. Name of Court: 6th Cir. Court of Appeals
B. Result: Denied
C. Date of Result: 12/07
D. Citation number of opinion:

E. Grounds raised (List each one): Waiver of counsel & decision to represent myself was unknowing, unintelligent, involuntary due to misrepresentation of the counsel, AUSA & court as to the availability of an advice of counsel defense

Note: if you filed an appeal in more than one court, attach an additional sheet of paper of the same size and give all of the information requested in Question 13, A through E.

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal (a post-conviction proceeding)?

28 USC § 2255 appeal only, see above

☐ Yes

☐ No

If your answer was yes, complete the following sections:

A. First post-conviction proceeding:

1. Name of Court: See above
2. Nature of Proceeding: NA
3. Grounds Raised: _____
4. Did you receive an evidentiary hearing? ☐ Yes ☐ No
5. Result: NA
6. Date of Result: _____

B. Second post-conviction proceeding: NA

1. Name of Court: _____
2. Nature of Proceeding: _____
3. Grounds Raised: _____
4. Did you receive an evidentiary hearing? ☐ Yes ☐ No
5. Result: _____
6. Date of Result: _____

C. Did you appeal to the result of the post conviction proceeding(s) to the highest court having jurisdiction?

1. First proceeding: ☒ Yes ☐ No Result: Pending: US Supreme
2. Second proceeding: ☐ Yes ☐ No Result: Court

D. If you did not appeal the adverse result of the post-conviction proceeding(s), explain briefly why not:

NA

12. For your information, the following is a list of the most frequently raised grounds for relief in applications for habeas corpus pursuant to 28 U.S.C. §2241. You may raise any grounds which you may have other than those listed. However, in this application, you should raise all available grounds on which you base your petition. Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check one or more of the grounds:

- A. U.S. Parole Commission unlawfully revoked my parole.
- B. Federal Bureau of Prisons unlawfully computed my sentence.
- C. Federal Bureau of Prisons unlawfully denied me credit for time served in state or federal prison.
- D. Federal Bureau of Prisons or State prison system unlawfully revoked my good time credits.
- E. There is an unlawful detainer lodged against me.
- F. I am a citizen and domiciliary of a foreign country and I am in custody for an act which I had a right to commit under the laws of my country.
- G. The act for which I was convicted is no longer considered to be a crime, and I cannot raise this issue in a §2254 petition or a §2255 motion.

CAUTION: if you fail to set forth all of the grounds in this petition at this time, you may be barred from presenting additional grounds at a later date.

State clearly every ground on which you are seeking relief. Summarize briefly the facts supporting each ground. If necessary, attach an additional page or pages behind this one.

A. **Ground one:** STATE OF OHIO CONVICTION USED TO INCREASE PETITIONER'S CRIMINAL HISTORY SCORE IS VOID UNDER THE LAWS OF THE US CONSTITUTION (18 USC §5005-5021 (b) et seq: FEDERAL YOUTH CORRECTIONS ACT: FYCA), U.S SUPREME COURT DECISION, Bousley v United States, 523 US 614, SAME BEING A JURISDICTIONAL DEFECT VIOLATING THE PETITIONER'S DUE PROCESS RIGHTS, Equal Protection rights under the 5th Amendment of the U.S. Constitution

Supporting facts: tell your story briefly without citing cases or law. You are cautioned that you must state facts, not conclusion, in support of your grounds. A "rule of thumb" to follow is this: who did exactly what to violate your rights at what time and place?

Petitioner (petr) was convicted in Ohio for a WEAPON UNDER DISABILITY, VARIOUS MARIJUANA TRAFFICKING CHARGES that were illegally enhanced with degree enhancing specifications per FYCA (18 USC § 5005 et seq) & a Pattern of Corrupt Activity that illegally listed the "expunged" FYCA conviction as an "overt act" & that further it was outside the 5 yrs "statute of limitations".

Petr is ACTUALLY INNOCENT of the Weapon Under Disability since under the FYCA petr was NOT under disability as the state admitted.

Ohio admitted, as they must per US Supremacy Clause that all petr's marijuana convictions were illegally enhanced with DECREE ENHANCING SPECIFICATIONS using the FYCA federal expunged conviction that did NOT exist as a matter of law.

The 1989 Ohio convictions are listed in the petr's PSI over objection.

The WEAPON UNDER DISABILITY is illegally listed on the PSI over objection since

~~XXXX Ground two~~ as a matter of law, the petr is actually innocent of the WEAPON UNDER DISABILITY per FYCA: See Tuten v United States, 460 US 660

Petr has exhausted all remedies in the State of Ohio per this GROUND

Petr has exhausted all remedies per Federal Conviction that he is serving time on per this GROUND.

There is NO OTHER remedy in the law to correct this "manifest injustice".

Per the laws of the United States & Supreme Court decisions petr's 1989 Ohio conviction used to increase the petr criminal history category is void.

The WEAPON UNDER DISABILITY in the PSI prejudices the petr along with the VOID
Supporting facts: 1989 state conviction

See Ex A: CERTIFICATE OF VACATION

C. Ground three:

Supporting facts:

D. Ground four:

Supporting facts:

13. Were all of the above grounds presented to another court, state or federal? If not, state which grounds were not presented. If yes, state the name of the court, date of decision, and the nature of the outcome:

1) Yes, the 1989 state conviction was exhausted to highest court

2) 1989 conviction was exhausted in the federal courts by taking same to the US Supreme Court.

3) Petr was directed to file a 28 USC § 2244 to 6th Cir. in a civil case & filed 13 times until he was directed by last decision that "clerk will NOT file anymore times & return papers"

14. If this petition concerns jail or prison conditions, prison disciplinary proceedings, a parole problem, computation of sentence, or other case under 28 U.S.C. § 2241, answer the following questions: *NA*

- A. Did you present the facts in relation to your present petition in the prison's internal grievance procedure?

☐ Yes ☐ No

1. If your answer to "A" above was yes, what was the result:

2. If your answer to "A" above was no, explain:

- B. If you are a federal prisoner, did you present your claim to the Bureau of Prisons or other federal agency for administrative action?

☐ Yes ☐ No

1. If your answer to "B" above was yes, what was the result:

2. If your answer to "B" above was no, explain:


15. Relief: State here, as briefly as possible, exactly what you want the court to do for you:

1. Make no legal arguments.

2. Cite no cases or statutes.

I would like the Court to rule that petr's 1989 state conviction is void as a matter of law. I would like the Court to ORDER that the petr's criminal history score be reduced to a LEVEL 1. I would like the Court to order that all reference to the WEAPON UNDER DISABILITY to voided out of the PSI & that all reference to the void state conviction be deleted since same is VOID per well settled law

Signed this 13 day of Aug, 2008
(day) (month) (year)




Signature of Petitioner

NA

Signature of Attorney (if any)

I declare (or certify, verify, or state), under penalty of perjury, that the foregoing is true and correct.

Date of Signature: 8/13/8



Signature of Petitioner